

**Petruzzelli, Kenneth@Waterboards**

---

**From:** Margaret Tauzer - NOAA Federal <margaret.tauzer@noaa.gov>  
**Sent:** Thursday, May 12, 2016 10:50 AM  
**To:** Petruzzelli, Kenneth@Waterboards  
**Cc:** Murano, Taro@Waterboards; Henriouille, Diana@Waterboards; Feiler, Stormer@Waterboards; Anderson, Skyler@Waterboards  
**Subject:** Re: Stanshaw Creek

The 2 cfs minimum bypass is based on the assumption of a maximum 3.0 cfs diversion. For example, the flow would have to be 5.3. to allow a maximum 3.3 diversion if flow were returned at hwy 96 and .3 cfs to consumptive use.

On Thursday, May 12, 2016, Petruzzelli, Kenneth@Waterboards <[Kenneth.Petruzzelli@waterboards.ca.gov](mailto:Kenneth.Petruzzelli@waterboards.ca.gov)> wrote:

Thank you Margaret. To clarify, is the minimum 2 cfs regardless? If flow is 2 cfs, under the bypass flow requirement, would any diversion be permitted? As for the Cole's, their right is 3 cfs. There are issues with that 3 cfs number, such as whether they put all of the 3 cfs to beneficial use. Regardless, with the 90% of unimpaired flow bypass, would the unimpaired The a need to be 30 cfs before they can divert their full right?

Thank you.

Ken Petruzzelli, Attorney III

State Water Resources Control Board

Office of Enforcement

1001 I Street, 16th Floor

Sacramento, CA 95814

tel: (916) 319-8577

fax: (916) 341-5896

[kenneth.petruzzelli@waterboards.ca.gov](mailto:kenneth.petruzzelli@waterboards.ca.gov)

**From:** Margaret Tauzer - NOAA Federal [mailto:[margaret.tauzer@noaa.gov](mailto:margaret.tauzer@noaa.gov)]  
**Sent:** Thursday, May 12, 2016 7:39 AM  
**To:** Petruzzelli, Kenneth@Waterboards  
**Cc:** Murano, Taro@Waterboards; Henriouille, Diana@Waterboards; Feiler, Stormer@Waterboards; Anderson,

Skyler@Waterboards

**Subject:** Re: Stanshaw Creek

Hi Ken,

From my analysis on the Cole's water right, I think the best way to explain our recommendation is as a minimum bypass flow requirement assuming the water diverted is for beneficial use. Our minimum bypass recommendation for protection of listed fish, is for a minimum of 2 cfs bypass at the POD while also maintaining 90% of the unimpaired flow at Highway 96 crossing with no significant temperature gain between the diverted water and the return flow. These recommendations imply that if flow is not returned, the diversion is limited to 10% of the unimpaired flow for all users as long as it is put to beneficial use as defined by SWRCB.

I recently received a question from Will asking how much flow could be diverted as the flow recedes. He had just measured 7 cfs in Stanshaw Creek. He was interested to know if 0.7 cfs could be taken. The 0.7 provides the appropriate level of protection of the stream on the day of the flow measure assuming no other diversions above the Coles (unimpaired flow at the POD) but I am not sure it meets Cole's water right or would be put to beneficial use.

I can participate in the call. I think the site visit to Bull Creek is not urgent.

Margaret

On Tue, May 10, 2016 at 1:08 PM, Petruzzelli, Kenneth@Waterboards  
<[Kenneth.Petruzzelli@waterboards.ca.gov](mailto:Kenneth.Petruzzelli@waterboards.ca.gov)> wrote:

Margaret,

I'm apologize for not better describing this call. This call is between Water Board staff, Doug Cole, Joey Howard and one of his associates, Will Harling, and Barbara Brenner. After the scope of work for the Mid Klamath contract came out I asked the staff here to write up their questions so we could send them to Doug Cole's attorney and discuss them. Although some questions were resolved on the April 24 call. Since Doug and Barbara were not on that call and there still might be questions about the bypass flow requirements and how they're supposed to work, we thought it would be useful to have you on the call in order to explain the bypass flow requirements. We understand if you have a scheduling conflict.

These are the questions from State and Regional Board staff –

## Water Right Division questions

- 1) The numeric consumptive use rate of 0.31 CFS (excludes hydropower water) reported by Mr. Cole is not supported by the Division. The Division would like to point out that .31 CFS over a 24-hour period is approximately 200,000 gallons of water per day. Based on the Division's field visits to the Ranch, the Division does not support that MMR uses that amount of water daily. Task # 5 in the Summary of Work (SOW) states that there will be a Water Efficiency Study performed (Study). The Division is interested in reviewing and commenting on the Study in order to determine what a reasonable daily use of water at the ranch is.
  
- 2) The two documents cite different amounts of water that will be diverted via the 6-inch pipes. On page 2 of the PDF titled Marble Mountain Pipeline the Q value = 0.35 CFS. In the document titled "40710 Revised SOW for Additional Funds \_Task six Revision" (SOW) in the second paragraph of section Task # 6 it states that the pipeline is sized to convey 0.31 CFS. The two documents are reporting a different volume of water will be diverted in the 6-in pipe.
  
- 3) Under Task # 6 in the SOW the following is stated – "This pipe is sized to convey consumptive flows (0.31 cfs), or 10% of Stanshaw Creek flow at the Point of Diversion (POD), (whichever is less), to MMR between May 15-October 31. In Order for MMR to accomplish this by-pass flow schedule, MMR will need to know what the flow is in Stanshaw Creek at the POD on a daily occurrence. Furthermore, how will MMR measure the amount of water diverted when they are restricted to 10 percent of the stream flow? In order to maintain compliance with the bypass requirement, MMR will need to measure the daily flow rate of Stanshaw Creek and have the ability of reducing the water diverted at the POD accordingly. The head gate will need to accommodate the reduced diversion rate to the 6 –inch pipe from 0.31 CFS to 10 % of the instantaneous flow in Stanshaw Creek.
  
- 4) Under Task # 6 in the SOW the following is stated. "Additionally, a short term modification to the MMR water system will be an engineered design for the outflow to Irving Creek from the MMR ditch where a head cut is causing active erosion into Irving Creek." The Division would like some elaboration of this statement. What exactly will be done? When will water diverted be returned to Stanshaw Creek? Is the "short term modification" needed so that construction can begin to return water back to Stanshaw?
  
- 5) The document gives the reader the impression that between May 15-October 31 that water for hydropower will not be diverted, is that true?

## Water Quality questions

- 1) Who did the Coles speak to at the USFS and what was provided from the USFS stating that changing the ditch location was not an acceptable option? Please have this decision provided in a written format signed by a USFS representative.

- 2) Where did the 6 inch temporary pipe size come from? We would like an analysis of how the size was determined and a detailed, written explanation of how summer flows will be controlled in regard to limiting the 6 inch pipe in the event it is necessary to do so to ensure adequate by pass flows.
- 3) Is the 10% of flow recommendation from NMFS for all users on Stanshaw or for only the Coles? Our impression is that it was the former.
- 4) The Restoration and Monitoring Plan described does not appear to have been submitted to the Regional Board or State Board for review and approval based upon the timeline and task milestones provided by the Coles. In addition, the Region does not see a discussion of permits required or any reference to conditional approvals of designs by the Regional Water Board or Division. Please have the Coles provide the designs for the pipe installation, including any necessary limitations during construction to mitigate impacts, and a complete list of all permits 1) required, 2) they have applied for, 3) and those permits received that allow them to conduct this scope of work of 1) preparing the ditch through excavation 2) installing the pipe and of 3) installing a temporary culvert fix at the outfall of the ditch into Irving Creek.
- 5) The proposed interim fixes are likely costly and do not appear to meet expectations in terms of reducing impacts and stabilizing –restoring streams. The Region is curious as to whether there has been a biological assessment of the existing ditch habitat value and the species that are occupying the ditch? What does DFW think about this?
- 6) Will the plans be submitted to the North Coast Regional Water Board and Division of Water Rights for review and approval prior to submission to other agencies for required permits and approvals to conduct the scope of work?
- 7) How have the Coles addressed CEQA through the scope of work they appear to have conducted and are intending to conduct?
- 8) As the water use analysis is incomplete, how have the Coles determined that the 6 inch pipe is appropriate, and how has the project design been influenced by the potential to develop efficiencies in the system?
- 9) Have any alternatives been considered in terms of 1) planning to put the water back into Stanshaw Creek; and 2) project alternatives to control erosion and diversion of the ditch? If not, why were these alternatives not considered and why was the preferred alternative chosen?

Ken Petruzzelli, Attorney III

State Water Resources Control Board

Office of Enforcement

1001 I Street, 16th Floor

Sacramento, CA 95814

tel: [\(916\) 319-8577](tel:9163198577)

fax: [\(916\) 341-5896](tel:9163415896)

[kenneth.petruzzelli@waterboards.ca.gov](mailto:kenneth.petruzzelli@waterboards.ca.gov)

**From:** Margaret Tauzer - NOAA Federal [mailto:[margaret.tauzer@noaa.gov](mailto:margaret.tauzer@noaa.gov)]  
**Sent:** Tuesday, May 10, 2016 12:52 PM  
**To:** Petruzzelli, Kenneth@Waterboards  
**Subject:** Re: Stanshaw Creek

Hi Ken,

I see this call on my calendar for Friday but I don't remember why it is there. Is that a call only from you or is it part of a bigger group? Adam Weinberg of SWRCB is planning a site visit to Bull Creek in South Fork Eel on the 13th and asked me to participate in that, so I am wondering whether I should go or stay for a call. Please let me know what works for you or if it is possible to reschedule that call.

Thanks,

Margaret

On Wed, May 4, 2016 at 10:56 AM, Petruzzelli, Kenneth@Waterboards  
<[Kenneth.Petruzzelli@waterboards.ca.gov](mailto:Kenneth.Petruzzelli@waterboards.ca.gov)> wrote:

Call-in number [877-873-8017](tel:8778738017)

Participant code 569008